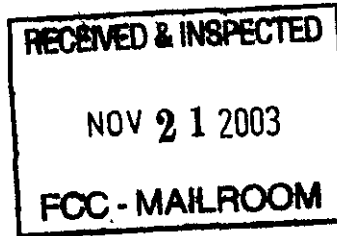


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November 20, 2003

**VIA FEDEX**

Tracking No. 836118949437

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline Competition Bureau  
9300 East Hampton Drive  
Capitol Heights, MD 20743

03-211

Re: In the Matter of Vonage Holdings Corporation's Petition for Declaratory  
Ruling

Dear Ms. Dortch,

On behalf of Texas Coalition of Cities For Utility Issues ("TCCFUI"), enclosed please find an original and four (4) copies of TCCFUI's Reply Comments on Vonage Holdings Corporation's Petition for Declaratory Ruling.

Please date stamp the enclosed extra copy and return it in the envelope provided. Please do not hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

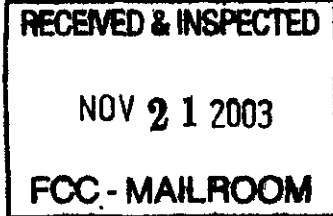
  
Clarence A. West, Attorney

Cc: Janice M. Myles, Wireline Competition Bureau, via email  
[janice.myles@fcc.gov](mailto:janice.myles@fcc.gov)  
Qualex International, via email - [qualexint@aol.com](mailto:qualexint@aol.com)

Enclosures

046  
#

Before the  
Federal Communications Commission  
Washington, DC 20554



In the Matter of	§	DA No. 03-2952
Vonage Holdings Corp Petition for	§	
Declaratory Ruling	§	WC Docket No 03-211
Concerning an Order of the Minnesota	§	
Public Utilities Commission		

**TEXAS COALITION OF CITIES FOR UTILITY ISSUES' REPLY COMMENTS ON**  
**VONAGE'S PETITION FOR DECLARATORY RULING**

Comes now the Texas Coalition of Cities for Utility Issues (referred to as "TCCFUI") and files these Reply Comments to the Vonage Petition for Declaratory Ruling to Preempt State Law. TCCFUI welcomes the opportunity to reply concerning the comments filed by other parties in this matter. While TCCFUI will not reiterate what the various commentors have said, it would note a few of them, which are of particular significance as to the matters raised in TCCFUI's Initial Comments.

**I. TCCFUI Agreement with ILEC Commentors**

Two principal incumbent local exchange carriers, ("ILEC's"), filed comments in this matter. Both are incumbent telecommunication providers that provide infrastructure in numerous states, including Texas and Tennessee, respectively, for the public switched telephone network ("PSTN"). As the two ILECs are paid "access charges", they both urge, specifically on that point, that VoIP providers should not avoid the obligation of paying access charges (and BellSouth also mentions the universal service fund) just because of the technology used to deploy the service.<sup>1</sup> Both ILECs assert that if any portion of a call utilizes the PSTN, then it

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<sup>1</sup> Bell South Corporation Comments, pages 4-6, SBC Communication, Inc Comments, pages 8-9.

should comply with the access charge obligations. BellSouth takes the position that VoIP characterized as an "information service" should not constitute a "loophole" which provides an exemption from various regulatory requirements-such as payment of "access charges" to them or contributing to the universal services fund.

The concept of function controlling over technology as to the applicability of regulations presented by these two ILECs is consistent with the filings and the comments of TCCFUI made earlier in this proceeding. As TCCFUI urged in those comments, just because a service is provided in part over the Internet, the VoIP service provider should not, through a technological loophole, avoid other obligations, such as paying universal services fees, access charges and 911 obligations, or in the state of Texas, paying access line charges to municipalities for use of the rights-of-ways.

TCCFUI, however, would disagree with SBC's characterization that if state regulations were to apply, they would be "arbitrary regulations."<sup>2</sup> The Public Utility Commission of Texas has an elaborate process for implementing rules and imposing obligations on providers of telecommunication services, as do most, if not all states. The providers and other interested parties participate in an open proceeding to discuss rules and regulations as they are drafted. The application of any particular regulations to a VoIP provider only occurs in a reasonable manner, after careful consideration. This is contrary to the assertion that regulations would be applied arbitrarily.

## **II. TCCFUI Agreement as to 911 Issues**

TCCFUI agrees with the comments concerning compliance with state 911 requirements filed by both the "Texas Commission on State Emergency Communications and Texas Emergency Communications Districts", , and the "Washington Enhanced 911 Program". The concern of the public using a telephone system which for years has had a ubiquitous 911 connection-and to now not require that same 911 connection if the service is provided via VoIP

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<sup>2</sup> SBC Comments, page 6.

would wholly undermine the years of confidence built into that 911 system. How will one know if a telephone is not 911 compliant? Do you ask before the emergency!!

### III. VoIP is a “functionally” a “telecommunication service”

In a broader manner, TCCFUI would agree with the comments of the “National Association of State Utility Consumer Advocates,” which go into great detail regarding VoIP being a “telecommunication service”. VoIP is used as a “telecommunication service” by consumers; and VoIP is marketed and functions as a “telecommunication service” by Vonage and other VoIP providers.

One of the rationales as to VoIP being an “information service” rather than a “telecommunication service” is that the data is “manipulated” and “changed” by the VoIP provider from an analogue signal to packets of data in order that it may be transmitted via the Internet. The Commission termed this “protocol processing”, even though the Commission has stated that if there were no net change, protocol processing was not to effect the classification.<sup>3</sup> But this is exactly what is happening with VoIP. In VoIP there is “protocol processing” with no net change. The data is “manipulated” to travel via the Internet, but it is no consequence to the ultimate function or the consumer. . No permanent change occurs in the data being sent. The manipulation of data only occurs in order to *use the Internet as a means of sending the data*.

The penultimate goal of the VoIP provider is to totally mimic a conventional telephone call. When a telephone call is made through VoIP, the voice goes in one end and it *must* sound exactly identical and in the same timeframe when it received at the other end. As VoIP is marketed that it will be exactly like the consumers’ phone service, the consumer should not be able perceive change in the “data” and that it will sound the same and be time identical to a phone call. That is the goal of the VoIP provider - their “Holy Grail” if you will - to be indistinguishable from the conventional phone system. In fact, if there were a *perceptible* manipulation in the words or the intonations or pauses in the telephone call it would not be a service that many consumers would want.

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<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd 11501, 11526-27, (“1998 FCC Report to Congress” herein)

It is a "telecommunication service" that is being purchased and not an "information service". It is not being purchased by the consumer so that sound (i.e. voice) can be manipulated and changed and be received at the other end sounding differently. It is purchased so that it will be identical. Just because the technology requires a different formatting, it is no different than when a conventional telephone call is changes the voice to an analog signal. Otherwise, anything short of two connected Dixie cups would not be considered a "telecommunication service" because some type of manipulation or change in the data always occurs.

It has also been asserted that as a "call" can be stored for retrieval later makes this an "information service". How is this functioning any differently from conventional voice mail? A call is stored and retrieved later. Yet just because an ILEC has "call notes" does not make the service an "information service". As the Commission has stated, function is to control the classification not the type of the facility used. In the case of VoIP, the "facility" is a computer and/or use of the Internet.<sup>4</sup>

#### IV. CONCLUSION

In conclusion, TCCFUI respectfully requests that this Request for a Declaratory Ruling to Preempt Minnesota state law, and by implication all State law, as to the regulation of VoIP by states be Denied.

Respectfully submitted,

Clarence A. West, Attorney

By: 

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ATTORNEY FOR TCCFUI

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<sup>4</sup> 1998 FCC Report to Congress, at 11530, para. 59 "the classification of a provider should not depend on the type of facility used "

**EXHIBIT A---TCCFUI Member Cities**

1	City of Abernathy	42	City of Lancaster
2	City of Addison	43	City of Laredo
3	City of Allen	44	City of League City
4	City of Andrews	45	City of Levelland
5	City of Arlington	46	City of Lewisville
6	City of Big Spring	47	City of Longview
7	City of Bowie	48	City of Los Fresnos
8	City of Breckenridge	49	City of Mansfield
9	City of Brenham	50	City of McAllen
10	City of Brookside Village	51	City of Midlothian
11	City of Brownwood	52	City of Missouri City
12	City of Buffalo	53	City of North Richland
13	City of Canyon	54	City of Palacios
14	City of Carrollton	55	City of Paris
15	City of Cedar Hill	56	City of Pearsall
16	City of Center	57	City of Plano
17	City of Cleburne	58	City of Ralls
18	City of College Station	59	City of Refugio
19	City of Conroe	60	City of Reno
20	City of Corpus Christi	61	City of River Oaks
21	City of Crockett	62	City of Rosenberg
22	City of Dallas	63	City of San Saba
23	City of Denison	64	City of Selma
24	City of Denton	65	City of Seminole
25	City of Dickinson	66	City of Seymour
26	City of El Lago	67	City of Snyder
27	City of Electra	68	City of South Padre
28	City of Fairview	69	City of Spearman
29	City of Flower Mound	70	City of Sugar Land
30	City of Fort Worth	71	City of Sunset Valley
31	City of Friendswood	72	City of Taylor Lake
32	City of Frisco	73	City of Terrell
33	City of Grand Prairie	74	City of Thompsons
34	City of Grapevine	75	City of Timpson
35	City of Greenville	76	City of Trophy Club
36	City of Henrietta	77	City of Tyler
37	City of Huntsville	78	City of University Park
38	City of Irving	79	City of Victoria
39	City of Jamaica Beach	80	City of Waxahachie
40	City of Kilgore	81	City of Webster
41	City of La Grange	82	City of Westlake